

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

P.S., aka STUDENT, by and through
his parent, JOANNA S.

v.

SOUTH KINGSTOWN SCHOOL DEPARTMENT

**Ruling on Supplemental Motion/Request for Clarification on
Ruling for Withdrawal Without Prejudice**

On April 15, 2015, this office issued a Ruling on the Motion for Withdrawal Without Prejudice and for Attorney Fees that was filed by counsel for P.S. in connection with counsel's earlier request for a Commissioner's hearing. Citing §300.517 of the Rhode Island Board of Education Regulations Governing the Education of Children with Disabilities, the Motion asserted that P.S. is a "prevailing party" under the Individuals with Disabilities Education Act (IDEA) and therefore entitled to attorneys' fees in this matter.

In our Ruling denying the Motion, we noted that §300.517(a) of the Regulations authorizes "the court" to award attorneys' fees in cases brought under IDEA and we held that the Commissioner is without authority to award attorneys' fees in an administrative proceeding.

The motion/request for clarification under review focuses on the nature of the claim presented in the hearing request, the action of the School Department following the telephone conference conducted by the Commissioner's hearing officer, and the extent to which the circumstances herein compare to a court-approved settlement. The motion/request does not, however, address the Commissioner's authority to award attorneys' fees under §300.517, which was the basis of our previous Ruling.

By its clear language, §300.517 does not grant administrative hearing officers jurisdiction to award attorneys' fees. Only the courts have this authority. No legal authority has been presented or found to support the award of attorneys' fees under IDEA in a Commissioner's hearing or a special education due process hearing. Neither type of administrative hearing officer is empowered to do so under §300.517. Our Ruling remains unchanged in that regard.

We further add that at no time did the hearing officer enter an order, make a ruling on the record or sign a consent decree which compelled the School Department to take action in this

matter. Consequently, the private resolution of the claim set forth in the hearing request did not carry with it sufficient judicial imprimatur so as to justify an award of attorneys' fees to P.S. as a "prevailing party" under *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001).¹

We affirm our previous Ruling denying the Motion.

Paul E. Pontarelli
Hearing Officer

Approved:

Ken Wagner
Commissioner of Education

Date: September 24, 2015

¹ The decision of the United States Supreme Court in *Buckhannon* begins as follows:

Numerous federal statutes allow courts to award attorney's fees and costs to the 'prevailing party.' The question presented here is whether this term includes a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct. We hold that it does not.